

## APPEAL NO. 010555

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 14, 2001. The hearing officer determined that the appellant (claimant) was not in the course and scope of his employment at the time he was injured in a motor vehicle accident on \_\_\_\_\_; that the claimed injury occurred while the claimant was in a state of intoxication; and that the claimant did not have disability because he did not sustain a compensable injury. In his appeal, the claimant asserts error in each of those determinations. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

### DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

In his appeal, the claimant acknowledges receipt of the hearing officer's decision on February 26, 2001, five days after the distribution date of the decision. Pursuant to Section 410.202(a), for an appeal to be considered timely, it must be filed or mailed within 15 days of the date of receipt of the hearing officer's decision. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994; Texas Workers' Compensation Commission Appeal No. 94111, decided March 10, 1994; Texas Workers' Compensation Commission Appeal No. 941225, decided October 24, 1994. Fifteen days from the claimant's receipt of the hearing officer's decision was Tuesday, March 13, 2001. The envelope containing the claimant's appeal is metered March 13, 2001; however, it was not postmarked until March 14, 2001. Therefore, the appeal was not mailed within the required 15 days and is untimely.

The claimant's appeal being untimely, the decision of the hearing officer has become final. Section 410.169.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge